

**FILED**

**APR 20 2010**

**SECRETARY, BOARD OF  
OIL, GAS & MINING**

BEFORE THE BOARD OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH

IN THE MATTER OF THE REQUEST FOR :	
AGENCY ACTION OF HIAWATHA COAL :	Docket No. 2009-006
COMPANY, INC., PETITION, FOR :	(Consolidated with 2009-007)
REVIEW OF THE CESSATION ORDER OF :	
THE DIVISION OF GAS, OIL AND MINING :	
OF FEBRUARY 5, 2009 FOR THE :	Cause No. C/015/025B
BEAR CANYON MINE :	

HIAWATHA COAL COMPANY, INC.'S  
MOTION TO CONTINUE HEARING

COMES NOW Hiawatha Coal Company, Inc., a Utah corporation ("Hiawatha" or "Petitioner") and moves the Board to continue the hearing on the consolidated requests now pending before the Board and scheduled for April 28, 2010 for the following reasons:

1. There are presently two (2) matters pending before the Board arising from two (2) separate requests for review of Division action filed by Hiawatha, *i.e.*, this action (the "First Request") and Action no. 2009-007 (the "Second Request") which were consolidated into the earlier number by this Board's ORDER ON HIAWATHA COAL COMPANY, INC.'S MOTION TO CONSOLIDATE TWO (2) PENDING REQUESTS FOR BOARD ACTION AND TO CONTINUE HEARING PENDING RESOLUTION OF UNDERLYING MATTERS (the "Board's Consolidation Order.")
2. The substance of the First Request (2009-006) is Hiawatha's contention that the Division of Oil, Gas and Mining (the "Division") improvidently or illegally issued its Cessation Order of February 5, 2009 (the "Cessation Order") in violation of the Division's own rules.
3. The substance of the Second Request (2009-007) is Hiawatha's contention

that the April 2, 2009 Decision and the Division's denial of the permit was based upon inaccurate facts and a misunderstanding on the part of the Division of the legal effect of the Bankruptcy Court's "Memorandum Decision" of March 18, 2009 as well as a misunderstanding of the effect of the Memorandum Decision upon the Division.<sup>1</sup> The Memorandum Decision and other bankruptcy court orders were appealed to the Bankruptcy Appellate Panel ("BAP") of the Tenth Circuit Court of Appeals, but the BAP has dismissed the appeal of the Memorandum Decision as interlocutory. Hiawatha is preparing to ask the court for certification under Rule 54(b) and intends to file a new appeal of that decision.

4. The effect of the April 2, 2009 Decision of the Division was that it made moot Hiawatha's request for agency action in the First Request because the arguments in the First Request were based upon the pendency of a complete application before the Division.

5. After several continuances, these consolidated matters were most recently continued to the Board's regularly scheduled meeting on April 28, 2010, again subject to further continuances as the parties may request or as the Board may deem appropriate, primarily because certain underlying disputes then pending in the US Bankruptcy Court remained unresolved.

6. On February 10, 2010, the Bankruptcy Court issued its FINDINGS OF FACT AND CONCLUSIONS OF LAW ARISING FROM TRIAL ON DECEMBER 10, 2009 AND JANUARY 12, 14, AND 19, 2010 (the "Court's Findings.") The Court's Findings contemplate the purchase of the Bear Canyon Mine by the buyer proposed by the Trustee, and the Court directed the Trustee to create a proposed order, which was eventually signed and entered by the Court on March 2, 2010 as Doc # 1189 (the "Order.")

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<sup>1</sup> A number of issues, including Hiawatha's operation of the Bear Canyon Mine have been raised in the US Bankruptcy Court for the District of Utah in a matter styled In re C W Mining and numbered 08-20105 (the "Pending Bankruptcy"), wherein the Memorandum Decision referred to was issued.

7. The order authorized and directed the Trustee to close the sale of the Bear Canyon Mine on a date certain, which the Trustee and buyer determined to be April 7, 2010, contingent upon the buyer's funding of the sale.

8. The buyer's funding did not materialize and the Trustee has declared a default under the buyer's purchase agreement with the Trustee.

9. COP, the landowner, has filed a MOTION TO DEEM 1997 COAL OPERATING AGREEMENT REJECTED (the "Motion"), in which motion Hiawatha has joined. The Motion is scheduled to be heard before the Bankruptcy Court on April 20, 2010 at 1:30 p.m.

10. Depending on the outcome of the hearing on April 20, 2010, it may be that Hiawatha's original objective to operate the Bear Canyon Mine is still viable, although the overall effect of the default on the part of the authorized buyer is unknown.

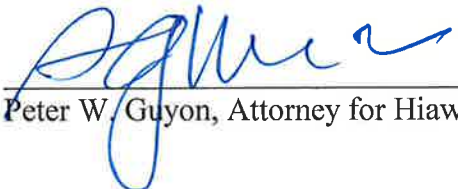
11. In all events, it would be a waste of the Board's time and resources to hear the matters scheduled for April 28, 2010 because of the unknowns generated by the authorized buyer's default in its obligation to fund the purchase.

12. The Division agrees with the present request.

WHEREFORE, Hiawatha moves the Board to continue the consolidated matters at least sixty (60) days in the future for the reasons set forth above.

A proposed order is submitted concurrently herewith.

Respectfully submitted this 19<sup>th</sup> day of April, 2010.

  
Peter W. Guyon, Attorney for Hiawatha

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed, first-class postage prepaid, a true and correct copy of the foregoing HIAWATHA COAL COMPANY, INC.'S MOTION TO CONTINUE HEARING to the following on this 19<sup>th</sup> day of April, 2010:

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DATED this 19<sup>th</sup> day of April, 2010.



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